

The examiner will note that claim 1 has been amended to incorporate the subject matter of claim 2. Claim 2 was not rejected based on the British '979 patent. Further, there is no disclosure or suggestion of the subject matter of the present application based on the disclosure of the British '979 patent. The British '979 patent does not describe or suggest mixing a heated portion of the aggregate with a second portion of the aggregate that is both unheated and moist. Therefore, any further rejection of claims 1, 3, 6 and 12 in view of the British '979 patent would appear unwarranted and should be withdrawn.

The examiner has also rejected claims 7-and 9-11 as unpatentable under 35 U.S.C. § 103(a) in view of the French '051 patent. This rejection is respectfully traversed.

As discussed above, the French '051 patent does not disclose no does it suggest to one of ordinary skill in the art heating a portion of the aggregate that is substantially free of fines and mixing this heated portion with a portion of the aggregate that is both unheated and moist. It is contended that the examiner has not made out a prima facie case of obviousness because there is no motivation in the French '051 patent either to heat a portion of the aggregate to above 100 degrees C or to mix this heated portion with a second unheated moist portion of the aggregate. Therefore, the rejection of claims 7 and 9-11 as obvious in view of the French '051 patent is unwarranted and should be withdrawn.

As noted above, new claims 13-24 are also considered patentable in view of the art cited by the examiner. It is believed that this application is in condition for allowance. An early indication of allowability is requested.

REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested in view of the foregoing amendments and the following remarks.

The status of the claims pending after the above amendments is as follows:

Claims 1, 3-12 – Pending and rejected;

Claim 2 – cancelled; and

Claims 13-25 – newly presented.

Newly presented claims 13-25 are well based in the disclosure of the present application. There is a disclosure that supports claims 13-25 on page 10, lines 4 to 22. Therefore, these claims are proper and do not constitute new matter. Also, it is contended that these claims are allowable in view of the patents cited by the examiner in view of the comments set out below.

The examiner has rejected claims 1-6, 8, and 12 under 35 U.S.C. §102(b) as unpatentable in view of French 26890511, hereinafter the “French ‘051 patent.” This rejection as it applies to the claims now presented is respectfully traversed.

The French ‘051 patent does not disclose drying or heating a portion of the aggregate to a temperature of greater than 100 degrees C prior to mixing with the bitumen. The French ‘051 is directed to a method to reuse blacktop material and contains no disclosure of the methods as claimed. Further, the French ‘051 patent does not disclose that the heated aggregate portion is substantially free from fines or that the heated mix of aggregate and bitumen is mixed with a second portion of the aggregate that is both unheated and wet with moisture. In addition, there is no suggestion in the French ‘051 patent that would lead a person of ordinary skill to the present invention as claimed. For at least these reasons, the rejection of claims 1-6, 8, and 12 as anticipated by the French ‘051 patent is now unwarranted and should be withdrawn.

The examiner has also rejected claims 1, 3, 6, and 12 under 35 U.S.C. § 102(b) as anticipated by GB430979, hereinafter the “British ‘979 patent. This rejection is respectfully traversed.

Appl. No. 10/624,023
Amdt. A dated September 28, 2005
Reply to O.A. March 29, 2005

Deposit Account Authorization

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903. A copy of this Transmittal is enclosed.

Respectfully submitted,

McCracken & Frank LLP
200 W. Adams, Suite 2150
Chicago, Illinois 60606
(312) 263-4700
Customer No: 29471

By: 

J. William Frank, III
Reg. No: 25,626

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